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7 SILICON VALLEY SELF DIRECT, LLC,
8 Plaintiff,
9 v.
10 PAYCHEX, INC., et al.,
11 Defendants.

12 Case No. [5:15-cv-01055-EJD](#)
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15 **ORDER DENYING MOTION FOR
16 LEAVE TO FILE MOTION FOR
17 PARTIAL RECONSIDERATION;
18 DENYING MOTION FOR
19 CERTIFICATION OF
20 INTERLOCUTORY APPEAL**

21 Re: Dkt. No. 41
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24 Plaintiff Silicon Valley Self Direct d/b/a California Labor Force (“CLF”) filed this action
25 for negligence, breach of contract and deceit against Defendants Paychex, Inc. and Paychex
26 Insurance Agency, Inc. (collectively, “Paychex”) alleging that Paychex caused CLF to lose its
27 workers’ compensation insurance coverage. Paychex moved, inter alia, to compel arbitration
28 based on the Paychex Productivity Services Agreement (“PPSA”), a contract Paychex claimed
governed its business relationship with CLF. See Docket Item No. 21. The court granted that
motion on July 20, 2015, but in doing so severed certain unconscionable portions of the PPSA’s
arbitration clause, including a requirement that the arbitration occur in Rochester, New York. See
Docket Item No. 40.

29 Paychex now moves for leave to file a motion for partial reconsideration. See Docket Item
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1 No. 41. Because it has not established a basis for such relief, that motion will be denied.
2 Paychex's alternative request for certification of an interlocutory appeal will also be denied.

3 **I. MOTION FOR LEAVE TO FILE MOTION FOR PARTIAL RECONSIDERATION**

4 In this district, motions for reconsideration, partial or otherwise, may not be filed without
5 leave of court. Civ. L.R. 7-9(a) ("No party may notice a motion for reconsideration without first
6 obtaining leave of Court to file the motion."). A request for leave must have two attributes. First,
7 the moving party must demonstrate at least one of the following grounds:

8 (1) That at the time of the filing the motion for leave, a material
9 difference in fact or law exists from that which was presented to the
10 Court before entry of the interlocutory order for which
reconsideration is sought. The party also must show that in the
exercise of reasonable diligence the party applying for
reconsideration did not know such fact or law at the time of the
interlocutory order; or
12 (2) The emergence of new material facts or a change of law
13 occurring after the time of such order; or
14 (3) A manifest failure by the Court to consider material facts or
dispositive legal arguments which were presented to the Court
before such interlocutory order.

15 Civ. L.R. 7-9(b).

16 Second, the party may not repeat any oral or written argument previously made with
17 respect to the interlocutory order that the party now seeks to have reconsidered. Civ. L.R. 7-9(c).

18 Here, Paychex argues the court failed to consider two material facts and one dispositive
19 legal argument when it found unconscionable the situs designation included in the PPSA's
20 arbitration clause. As to facts, Paychex believes the court failed to address that (1) the "main
21 witness" relied to CLF's claims, at least as Paychex is concerned, is located in Rochester, New
22 York, and (2) that CLF "failed to provide any facts" to substantiate the finding that an arbitration
23 in New York would be unaffordable or unreasonable. As to the dispositive legal argument,
24 Paychex contends the legal standard utilized by the court "was not based on controlling federal
25 law."

1 These arguments are unpersuasive. As an initial matter, the court must observe that
2 Paychex presented little, if any, response to CLF's unconscionability claims in the motion
3 briefing. These claims were raised by CLF in the opposition to Paychex's motion to compel
4 arbitration. Paychex could have addressed unconscionability in its Reply, and could have made
5 each of the arguments it seeks to raise on reconsideration. Instead, it essentially left CLF's claims
6 unopposed. Under these circumstances, Paychex must live with the result of its decision, no
7 matter the basis for it. Reconsideration does not allow party to raise arguments it should have
8 made earlier. See Civ. L.R. 7-9(b) (emphasizing that failure to consider material facts or legal
9 arguments only occurs when such facts or arguments were presented to the court in the first
10 instance); see also *Frietsch v. Refco, Inc.*, 56 F.3d 825, 828 (7th Cir. 1995) ("It is not the purpose
11 of allowing motions for reconsideration to enable a party to complete presenting his case after the
12 court has ruled against him. Were such a procedure to be countenanced, some lawsuits really
13 might never end, rather than just seeming endless.").

14 Moreover, the court did not fail to consider anything that was presented in the motion
15 briefing. As the order demonstrates, the court was aware of the parties' relative positions and
16 locations when it concluded that arbitration in New York was infeasible for CLF. And although
17 not explicitly stated, the order implies that regardless of where its employees are located,
18 arbitration in California is simply not as burdensome to Paychex. Paychex did not and has not
19 produced anything to contradict that finding other than the location of one employee who
20 negotiated a contract with a California company.

21 Similarly, it is untrue that CLF's opposition to a New York arbitration was
22 unsubstantiated. The court cited to the declaration of Mauricio Mejia in the order. Mejia, as the
23 president of CLF, is qualified to comment on how an arbitration held on the opposite side of the
24 country would affect CLF's business operations. The court accepted Mejia's statement, which
25 was left unchallenged by Paychex.

26 Finally, Paychex's contention concerning allegedly unconsidered "dispositive" legal
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1 arguments ignores its own briefing, explicit statements in the order, as well as the issue that was
2 decided. The court did not fail to account for anything stated in Manetti-Farrow, Inc. v. Gucci
3 America, Inc., 858 F.2d 509 (9th Cir. 1988), or Bremen v. Zapata Off-Shore Co., 407 U.S. 1
4 (1972), the two cases Paychex seeks to raise after the fact, because neither case was cited in
5 Paychex's briefing.

6 In any event, the court explicitly demonstrated its awareness of the federal policy favoring
7 arbitration and the presumption of arbitrability accompanying that policy. But arbitration clauses
8 are still subject to contract defenses rooted in state law. See Pokorny v. Quixtar, 601 F.3d 987,
9 994 (9th Cir. 2010). That inquiry is distinct from the federal law that applies to arbitration
10 agreements and, in this case, was an issue that Paychex did not address.

11 In sum, Paychex has not established what it must to bring a motion for leave to file a
12 motion for partial reconsideration.

13 II. MOTION FOR CERTIFICATION OF INTERLOCUTORY APPEAL

14 The district court may certify for interlocutory appeal an order involving (1) "a controlling
15 question of law," (2) "as to which there is substantial ground for difference of opinion," and (3)
16 "immediate appeal from the order may materially advance the ultimate termination of the
17 litigation." 28 U.S.C. § 1292(b). The purpose of § 1292(b) is to "facilitate disposition of the
18 action by getting a final decision on a controlling legal issue sooner, rather than later" in order to
19 "save the courts and the litigants unnecessary trouble and expense." United States v. Adam Bros.
20 Farming, Inc., 369 F. Supp. 2d 1180, 1182 (C.D. Cal. 2004).

21 Interlocutory certification is the exception, not the rule. "The policy against piecemeal
22 interlocutory review other than as provided for by statutorily authorized appeals is a strong one."
23 Pac. Union Conference of Seventh-Day Adventists v. Marshall, 434 U.S. 1305, 1309 (1977)
24 (citing Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737 (1976)). "Section 1292(b) is a departure
25 from the normal rule that only final judgments are appealable, and therefore must be construed
26 narrowly." James v. Price Stern Sloan, Inc., 283 F.3d 1064, 1067 n.6 (9th Cir. 2002). The rule

1 should only “be used in exceptional situations in which allowing an interlocutory appeal would
2 avoid protracted and expensive litigation.” In re Cement Antitrust Litig., 673 F.2d 1020, 1026
3 (9th Cir. 1982).

4 Paychex believes the court should certify the following issue for interlocutory appeal:
5 “[w]hether a party challenging a forum selection clause on the grounds of substantive
6 unconscionability must show that the party will be effectively denied a meaningful day in court if
7 required to arbitrate in the contractually agreed-upon forum.” But for reasons similar to those
8 explained above, the court does not find this issue satisfies the applicable standard.

9 First, the question presented by Paychex is not a “controlling” one for this case. Under §
10 1292(b), a question of law is “controlling” if “resolution of the issue on appeal could materially
11 affect the outcome of litigation in the district court.” Id. Regardless of how Paychex’s question is
12 answered, the “outcome” is the same as far as the district court is concerned: this case remains
13 stayed while CLF’s claims proceed to arbitration. At this point, the choice is not between claims
14 proceeding in court versus claims proceeding through arbitration. An arbitration will occur.

15 Nor is there substantial ground for a difference of opinion under these circumstances. As
16 already noted, the court found the situs provision unconscionable based on an uncontradicted
17 statement by a qualified individual. There is not room for “substantial” disagreement.

18 Furthermore, permitting an interlocutory appeal based on Paychex’s question does nothing
19 to “materially advance the ultimate termination of the litigation.” In fact, the opposite is true.
20 Again, the next step in this litigation is an arbitration of CLF’s claims. Inserting a time-
21 consuming and costly appeal into what should be a streamlined process will not delay rather than
22 advance an ultimate resolution of this action.

23 Since this is not an exceptional situation requiring interlocutory direction from the
24 appellate court, Paychex’s question will not be certified for appeal.

25 **III. ORDER**

26 Based on the foregoing, Paychex’s Motion for Leave to File a Motion for Partial

1 Reconsideration (Docket Item No. 41) is DENIED. Its request for certification of an interlocutory
2 appeal is also DENIED.

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4 **IT IS SO ORDERED.**

5 Dated: August 24, 2015



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7 EDWARD J. DAVILA
United States District Judge

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11 United States District Court
12 Northern District of California
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